

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Parts 1 and 22 of the)	WT Docket No. 05-42
Commission's Rules To Adopt)	
Competitive Bidding Rules for)	
Commercial and General Aviation Air-)	
Ground Radiotelephone Service)	

COMMENTS OF SPACE DATA CORPORATION

Space Data Corporation (“Space Data”) submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) February 22, 2005 Notice of Proposed Rulemaking (“*ATG Notice*”) regarding the competitive bidding rules for the auction of two new commercial air-to-ground (“ATG”) licenses.¹ Space Data supports the Commission’s proposals to: (1) auction commercial ATG licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q of the Commission’s rules,² and (2) provide bidding credits for small businesses that participate in a commercial ATG auction. These proposals are consistent with prior Commission auctions and would encourage the participation of

¹*Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services*, Report and Order and Notice of Proposed Rulemaking, WT Docket Nos. 03-103, 05-42, File No. 0001716212 (rel. Feb. 22, 2005) (“*ATG Order*” and “*ATG Notice*”). The *ATG Order* and *ATG Notice* were published in the Federal Register on April 13, 2005. 70 Fed. Reg. 19377 (2005).

² 47 C.F.R. §§ 1.2101-1.2113.

small businesses that can develop and deploy new and innovative technologies and ATG services.

I. COMMERCIAL ATG LICENSES SHOULD BE AUCTIONED UNDER THE COMMISSION'S GENERAL COMPETITIVE BIDDING RULES.

The Commission recently revised its rules to restructure the commercial ATG band to facilitate the provision of new, innovative wireless telecommunications services on airplanes. To provide licensees with the flexibility to tailor the available 4 MHz of ATG spectrum to best suit their individual needs, the Commission is making three band configurations available, one consisting of two 3 MHz overlapping licenses and two consisting of one 3 MHz exclusive license and 1 MHz exclusive license. The licenses will be awarded pursuant to the band configuration that receives the highest aggregate gross bid.³

The general competitive bidding rules set forth in Part 1, Subpart Q of the Commission's rules should be applied to the commercial ATG auction in order to advance its goals of simplifying and increasing the efficiency of its general licensing process.⁴ The use of these well-established competitive bidding rules provides

³ Because one band configuration will ultimately be used for commercial ATG spectrum, applicants will be bidding against other applicants for a particular license under a particular band plan, as well as against the other band plans. Space Data agrees with the Commission that whether individual applications for commercial ATG licenses are mutually exclusive for competitive bidding purposes under Section 309(j) of the Communications Act, as amended, 47 U.S.C. § 309(j), should be based upon whether different applicants have applied for the same licenses and whether different applicants have applied for licenses in other band configurations.

⁴ See, e.g., *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162, 25217 (2003) (“*AWS Auction Order*”) (applying the

auction participants with consistent guidance that reduces the likelihood of confusion regarding general auction requirements.⁵ Applying the Part 1 competitive bidding rules in this case also reduces the burden on the Commission and the public of conducting a rulemaking to develop separate general auction requirements for commercial ATG licenses and ensures that the auction and deployment of new and innovating ATG services will not be unduly delayed.⁶

There are no compelling reasons why new or distinct general competitive bidding requirements should apply to the commercial ATG auction. The fact that one band plan will ultimately be used for commercial ATG spectrum does not necessitate changes to the Part 1 general competitive bidding rules. Any differences from past auctions resulting from the multiple band configurations or any other reason can be addressed by the Wireless Telecommunications Bureau when it seeks comment on auction-specific procedures for commercial ATG licenses.

II. BIDDING CREDITS WILL ENCOURAGE GREATER PARTICIPATION IN A COMMERCIAL ATG AUCTION.

The Commission should provide bidding credits for small businesses that participate in the commercial ATG auction, as it has done for the vast majority of

Commission's general competitive bidding rules to the auction of advanced wireless service licenses).

⁵ See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, 13 FCC Rcd 374, 376 (1998) (use of the Commission's auction program reduces "the burden on the Commission and the public of conducting service-by-service auction rule makings").

⁶ *Id.*

wireless license auctions. The Commission has long used bidding credits to further its statutory goal of ensuring that “small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.”⁷ An auction often provides the best opportunity for qualified designated entities to acquire wireless licenses.⁸ This is particularly true here given that only two commercial ATG licenses will be auctioned, making it unlikely that designated entities will be able to obtain either of the licenses post-auction through other means.

Bidding credits also further the statutory goal of allocating licenses in a manner that promotes “economic opportunity and competition” and “ensure[s] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses.”⁹ For example, Space Data has developed an innovative balloon-based telecommunications network that utilizes inexpensive weather balloons to carry miniature radio repeaters (SkySites®). Space Data’s system, a type of stratospheric high altitude platform, already is being used to provide advanced wireless services in the South Central United States and can be used to provide valuable ATG services.¹⁰

⁷ 47 U.S.C. § 309(j)(4)(D).

⁸ *AWS Auction Order*, 18 FCC Rcd at 25219-20 ¶ 148.

⁹ 47 U.S.C. § 309(j)(3)(B).

¹⁰ *See generally*, Reply Comments of Space Data Corporation (filed Oct. 23, 2003), Space Data Ex Parte Presentations (filed June 14, 2004, Sept. 9, 2004, and Oct. 14, 2004).

Absent bidding credits, however, Space Data and other small businesses may not be able to participate in a commercial ATG auction. It is well established that bidding credits provide small businesses with “an opportunity to compete successfully against large, well-financed entities” by providing these businesses with needed funding as well as helping them more readily acquire critical financing from investors.¹¹ Bidding credits allowed Space Data to secure spectrum in other auctions for its start-up operations and to begin offering advanced wireless services to customers in rural and other underserved areas. Although Space Data has the resources and expertise to provide valuable ATG services, without the benefit of bidding credits it is questionable that it could compete against much larger and better financed companies.

The *ATG NPRM* proposes a 15 percent credit for small businesses (companies with average annual gross revenues of less than \$40 million for the three preceding years) and a 25 percent credit for very small businesses (companies with average annual gross revenues of less than \$15 million for the three preceding years).¹² The Commission, however, should increase these bidding credits to 25 percent for small businesses and 35 percent to very small businesses to reflect the unique nature of

¹¹ *AWS Auction Order*, 18 FCC Rcd at 25219-20 ¶ 148 (citing *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, 14 FCC Rcd 10030, 10091 (1999)).

¹² *ATG Notice* ¶ 175.

the ATG market.¹³ At least two small businesses have shown serious interest in competing against larger companies with significant resources for commercial ATG licenses. Increased bidding credits would level the playing field between the small and large companies. For example, the incumbent ATG service provider, Verizon Airfone, is the subsidiary of one of the largest telecommunications companies in the United States and has access to significant financial resources. Developing ATG networks and services will require significant investment, and increased bidding credits will help smaller companies such as Space Data attract needed financing from other sources. Effective competition for ATG licenses will only be accomplished by providing small companies with increased bidding credits.

III. CONCLUSION.

Space Data supports the Commission's proposals to apply its general competitive bidding rules to the commercial ATG auction and provide bidding credits to eligible applicants. The Commission, however, should increase the bidding credits to reflect the unique characteristics of the ATG market.

Respectfully submitted,

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¹³ The Commission has afforded increased bidding credits in other auctions, including Auction 30 (39 GHz), Auctions 17 and 23 (local multipoint distribution service), and Auction 14 (wireless communications service).

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